

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ISHMAEL A. BURK,

Plaintiff,

v.

SUPERINTENDENT WAKEFIELD,  
*et al.*,

Defendants.

No. 4:21-CV-01354

(Chief Judge Brann)

**ORDER**

**AND NOW**, this 1<sup>st</sup> day of June 2022, in accordance with the accompanying Memorandum, **IT IS HEREBY ORDERED** that:

1. Defendants' motion (Doc. 12) to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is **GRANTED** in part and **DENIED** in part, as follows:
  - a. Burk's Fourth Amendment claim is **DISMISSED** with prejudice.
  - b. Burk's First Amendment access-to-courts claim is **DISMISSED** without prejudice as to all Defendants.
  - c. Burk's First Amendment retaliation claim against defendant Cassol is **DISMISSED** without prejudice.
  - d. To the extent that Burk is asserting an Eighth Amendment conditions-of-confinement claim, said claim is **DISMISSED** without prejudice as to all Defendants.

- e. Burk's Eighth Amendment claim of deliberate indifference to serious medical needs against defendant Smith is **DISMISSED** without prejudice.
  - f. Defendants' motion to dismiss is **DENIED** as to Burk's First Amendment retaliation claim against defendants Hann, Smith, Wakefield, and Grassmeyer.
  - g. Defendants' motion to dismiss is **DENIED** as to Burk's Eighth Amendment excessive force claim against Hann and Smith.
- 2. Burk, if desired, may file an amended complaint in conformity with the accompanying Memorandum within **21 days** of the date of this Order, or on before **June 22, 2022**.
  - 3. If no amended complaint is timely filed, this case will proceed on the following Section 1983 claims: (1) First Amendment retaliation against defendants Hann, Smith, Wakefield, and Grassmeyer; and (2) Eighth Amendment excessive force against Hann and Smith.

BY THE COURT:

*s/ Matthew W. Brann*

Matthew W. Brann

Chief United States District Judge